acter of that stream whereby changes in its banks are great and rapid. Also *Jones* v. *Soulard,* 24 How. 41. The court assumes that if no injury is done to the public right by adopting that rule in cases of simple accretions the public cannot be injured by the application of the common law doctrine as affecting the riparian owner's right to the bed of the stream in cases where the river has suddenly left its bed and sought a new one. The effect is the same in both cases. The decision is of great importance in that it lays down the law that in Nebraska the title to the beds of fresh-water navigable rivers is not in the state but in the riparian owner, and is interesting, in a way, as showing how readily a court will reverse itself when given notice of a former erroneous decision.

WITNESSES—IRRELEVANT QUESTIONS—CONTEMPT IN REFUSING TO ANSWER. —Certiorari to review a judgment committing the petitioner for contempt of court. *Held,* that the fact that certain questions put to the petitioner as a witness were irrelevant could furnish no basis for impeaching his commitment for contempt in refusing to answer them. *Ex parte Butt* (1906), — Ark. —, 93 S. W. Rep. 992.

This is undoubtedly the better and prevailing rule. There are, however, authorities to the contrary. The case of *Ex parte Zeehandelaar,* 71 Cal. 238, was a case of habeas corpus proceedings to impeach the commitment of the petitioner for contempt in refusing to answer irrelevant questions. The Code of California provides that "a witness must answer questions legal and pertinent to the matter in issue" (Code Civ. Proc. § 2065) and asserts it to be the right of the witness "to be examined only as to matters legal and pertinent to the issue" (id. § 2066). In releasing the petitioner the court, referring to the code says, "Such being his right, we think it follows that the refusal to answer a question not pertinent to the issue was no contempt, and that the order adjudging him guilty of the contempt which fails to show that the question was pertinent to the issue was invalid." See also *Ex parte Henshaw,* 73 Cal. 510. These decisions are doubtless governed by the peculiar provisions of the California Code above referred to. Similar provisions have been incorporated in the codes of a few of the states. Supporting the ruling in the case just quoted from, see *Re Rogers,* 129 Cal 468; *People* v. *Glaze,* 139 Cal. 154; *Ex parte Jennings,* 60 Ohio St. 319; *Ehrman* v. *Ehrman* [1896], 2 Ch. 826; *Gihon* v. *Albert,* 7 Paige 278; *Holman* v. *Mayor of Austin,* 84 Tex. 668; *In re MacKnight,* 11 Mont. 126. In CHURCH ON HABEAS CORPUS, 2nd Ed. § 332, it is said, "But it is no contempt to refuse to answer an impertinent question, or one which cannot properly be asked, that is, one not pertinent to the issues involved, or improper for some other reason; and if the witness is committed for such refusal he will be discharged on Habeas Corpus." The learned author says in the note, "In such cases there is want of jurisdiction," which seems to be the principle adhered to by courts taking this view. See California cases cited, *supra,* and others. In the light of other cases, however, the better view seems to be that the mere fact that questions put to the witness are irrelevant or improper will not deprive the court of its *jurisdiction* to commit for contempt in refusing to

answer them, if the other elements of jurisdiction are present. In *People* v. *Cassels,* 5 Hill 164, the court says: "If the justice had authority to inquire into the alleged offence, the commitment could not be impeached on Habeas Corpus for any supposed error of the justice in requiring the witness to answer an improper question." * * * "When the return states the imprisonment to be by virtue of legal process, the officer may inquire whether in truth there be any process, and whether it appears upon its face to be valid; * * * but he cannot rejudge the judgment of the committing court or magistrate." Conceding that the court has jurisdiction, whether it has been properly exercised is a different question. This is the question in the principal case. In RAPALJE, CONTEMPT, § 66, it is said, "a witness can not be permitted to refuse to answer a question on the ground that it is irrelevant. To hold that a witness could decide for himself upon the irrelevancy of a question, against the opinion of the judge presiding or the officer taking the deposition, would be subversive of all order in judicial proceedings." See also WIGMORE, EVIDENCE, § 2210; *Harding* v. *American Glucose Co.,* 182 Ill. 551; *De Camp* v. *Archibald,* 50 Ohio St. 618; *People's Bank* v. *Brown,* 112 Fed. 652; *Ex parte McKie,* 18 Mo. 599. A slightly different question arises in cases where the questions to the witness are of a nature tending to disgrace him, as well as being irrelevant. There seems to be authority for saying here that the witness may refuse to answer. It is so stated in RAPALJE, CONTEMPT, § 72, and also in the AM. & ENG. ENCYC. OF LAW, vol. 7, p. 51. The latter authority cites only *Ex parte Zeehandelaar* and *Ex parte Henshaw, supra,* in support of the proposition, neither of which decides the point. See, however, *Knowles* v. *Knowles, 2* Houst. 133 (Del.), *Lohman* v. *The People,* 1 N. Y. 379; *People* v. *Blakeley,* 4 Parker Cr. R. 176 (N. Y.). The language in these cases is somewhat ambiguous and would seem not to go the length of holding that the witness may refuse to answer against the decision of the judge presiding, that the questions are relevant. Whether the court could compel the witness to answer a question which it had expressly decided to be irrelevant, is a point not likely to arise, and upon which there seems to be no decision. The court in *Ex parte McKie, supra,* says that the mere fact that a court orders a witness to answer, is impliedly deciding that the question is relevant. Under this principle, it would seem to be impossible for a court to require a witness to answer an irrelevant question, for by the act of requiring the answer, the decision as to relevancy would be made in the affirmative. It would seem to be necessary to the best interests of justice that, even in this latter case of both irrelevancy and disgrace, the decision as to such irrelevancy should always be within the discretion of the court and not that of the witness.

WITNESSES—PRIVILEGE OF THE ACCUSED IN A CRIMINAL CASE TO REFUSE TO TESTIFY.—In a prosecution for assault with intent to rape, *held,* that it was not permissible for the state to require the accused to place a cap on his head for the purpose of assisting the prosecutrix in identifying him. *Turman* v. *State* (1906), — Tex. —, 95 S. W. Rep. 533.

Probably a majority of the jurisdictions today would support this ruling,